

BOARD OF APPEALS CASE NO. 4989

BEFORE THE

APPLICANT: Ward & Lambdin, Inc.

ZONING HEARING EXAMINER

REQUEST: Variance to allow a motor
vehicle filling station driveway to be
within 400 feet of an institutional use;
MD Route 22, east of Thomas Run Road,
Bel Air
HEARING DATE: January 12, 2000

OF HARFORD COUNTY

Hearing Advertised

Aegis: 11/24/99 & 12/1/99

Record: 11/26/99 & 12/3/99

* * * * *

ZONING HEARING EXAMINER'S DECISION

Ward & Lambdin, Inc., Applicant, has filed a request for a variance from the requirements of Section 267 -39(C)(7)(e) of the Harford County Code ("Code") to allow a motor vehicle filling station driveway to be located less than 400 feet from the property line of any public or private institutional use in a B2, Community Business District.

The subject property is owned by Charles C. and Gretchen Edwards, and is designated among the records of the State Department of Assessments and Taxation as Tax Map 42, Parcel 329. The subject property is located in the Third Election District and is 20.01 acres, more or less.

Mr. James Martin appeared and testified that he is a vice president of the Applicant. The Applicant is the contract purchaser of the subject property and wishes to construct a combination convenience store and gas station ("Station") on the subject property. The location of the proposed driveways to the Station are located less than 400 feet from the campus of Harford Community College ("HCC") which adjoins the subject property and the Grace Assembly of God Church ("Church") located across Route 22 from the subject property. He testified that there will be 12 fueling pumps and a convenience store as shown on the site plan of the property. The witness explained that the exact locations of the driveways may be changed due to State Highway Administration ("SHA") requirements. As a result, the Applicant is requesting a 0 foot setback for the driveways. The witness also explained that if additional zoning approvals were granted, the Applicant would like permission to relocate the westernmost driveway to share an entrance to Route 22 as shown as "Option A" on Exhibit 11.

Case No. 4989 - Ward & Lambdin, Inc.

The witness testified that practical difficulty would result if the variance is not granted. He explained that there is no location along the frontage of the property which would enable the driveways to be located without the variance. He also indicated there is no other commercially reasonable location on the property for the Station. In theory a single driveway for the Station could be located off of Campus Hills Drive. However, such a single driveway in that location would not provide convenient, direct access necessary for the Station. The witness said that granting the variance would not hurt anyone in any way due to the fact that the two institutional users affected by the request, HCC and the Church, had both consented to the variance and that the use would generate very little additional traffic. The witness also said the conditions of approval set forth in the Department of Planning and Zoning ("Department") Staff Report were acceptable.

Next, Donald Porter, Vice President for Institutional Advancement for HCC testified. Mr. Porter stated that HCC was aware of the nature of the Applicant's request and was not opposed to it.

The next witness to testify was Torrie Pierce, an expert civil engineer. Mr. Pierce explained that he had prepared the site plan of the subject property, Exhibit 8, and the plan of the entire parcel, Exhibit 9. Mr. Pierce testified that the subject property had an "L" shape, had frontage on Route 22 and was located next to the Campus Hills Shopping Center. He explained that due to the subject property's topography, the septic reserve area had to be located in the rear of the property. The wellhead protection area located on the subject property also restricted development on the parcel. Soil conditions along the property's frontage with Route 22 prevented the septic reserve area from being located on that portion of the site. Mr. Pierce explained that for these reasons, the use could not be located on another portion of the site. He also noted that the driveway to the Church was located approximately 100 feet east of the subject property's eastern boundary line along Route 22, far removed from the proposed Station driveway entrances. Furthermore, the frontage of the Church property was impacted by the natural resource district which prevented development of that portion of the Church property.

Case No. 4989 - Ward & Lambdin, Inc.

The next witness to testify on behalf of the Applicant was Mickey Cornelius, an expert traffic engineer. The witness testified that he was retained by the Applicant to analyze traffic conditions related to the subject property's operations and how the proposed driveways might affect the Church or HCC. He explained that he studied the key intersections at Route 22 and MD 136 and Route 22 at Thomas Run Road/Shucks Road, determined existing peak hour traffic volumes at the key intersections, determined future peak hour traffic volumes at the key intersections, determined additional trips generated by the proposed use and analyzed the key intersections including the new traffic generated by the Station.

The witness testified that the Station would generate approximately 85% pass-by trips, i.e. 85% of the trips to the Station would be made by people already on the road network. Mr. Cornelius testified that Harford County uses a very conservative 60% pass-by trip standard for convenience stores with gas stations. The witness said that even using this very conservative 60% standard, no adverse traffic impacts would result from approval of the variance. Mr. Cornelius indicated that sight distances along the proposed Route 22 entrances were acceptable.

The witness testified that based on his analysis, in his opinion, the proximity of the fuel stop driveway entrances to the Church and HCC would not cause any traffic safety problem or increase the risk or possibility of an accident. He said the road network was adequate to handle the limited traffic generated by the Station and would not cause any dangerous traffic conditions whatsoever. Mr. Cornelius indicated that although, in theory, it would be possible to move the proposed driveway entrances more than 400 feet from HCC and the Church to Campus Hills Drive, doing so would make it far less convenient for motorists to access the site and would be inappropriate from a traffic standpoint.

Mr. Cornelius testified that from a traffic standpoint, the location of the Route 22 entrances for the fuel stop would have absolutely no impact on the Church or HCC. He testified that the entrances are far enough removed from HCC and the Church so as to cause no adverse impact whatsoever.

Case No. 4989 - Ward & Lambdin, Inc.

The final witness to testify on behalf of the Applicant was Denis Canavan, an expert land planner. The witness testified that the sale of gasoline is permitted as of right in the B2 District and the only request before the Board was for the location of the fuel stop driveway entrances.

Mr. Canavan explained that the original section of the 1957 Harford County Zoning Ordinance indicated that service station driveways had to be located at least 400 feet from an institutional use located on the same side of the road. Later, this language was changed to simply provide that such a driveway could not be located within 400 feet of an institutional use. He indicated that the 400 foot setback was selected from model ordinances which several jurisdictions had adopted but had since repealed. The witness pointed out that the 400 foot setback requirement was designed to protect valid institutional uses from the impacts inherent in a true motor vehicle filling station. He indicated that in the 1950's the typical filling stations were not self serve operations, performed motor vehicle repairs and did not have adequate on-site stacking area. These uses could cause adverse impact on institutional uses. He testified that the proposed use does not create the kinds of impacts or meet the definition of the 1950's style gas station which may have originally justified the 400 foot setback requirement.

Mr. Canavan said in his opinion the subject property was unique for the following reasons: As pointed out by Mr. Pierce, the wellhead protection area, soil conditions and septic reserve area restrict the ability to move the Station to another location on the subject property. The location of the single driveway access outside the 400 foot setback requirement would be inappropriate from a traffic, business and planning standpoint. The property has an "L" shape and adjoins existing commercial development. Given the property's limited frontage on Route 22 there is no location where the use could be moved such that the variance would not be required. Other service stations in the area have coexisted for many years with driveways located within 400 feet of the Church and HCC without impact. The nearest HCC building is over 1,000 feet from the proposed driveway locations. HCC's access is located on Thomas Run Road and is far removed from the driveway locations. No possible traffic impacts to the Church or HCC could result from approval of the requested area variance. The proposed driveways do not conflict with the Church's driveway which is located approximately 100 feet away. Because the frontage of the Church property is impacted by NRD, that area cannot be developed with uses that could conflict with the Station.

Case No. 4989 - Ward & Lambdin, Inc.

Mr. Canavan said that in his opinion, the Applicant would suffer practical difficulty if the variance was denied in that the Station could not be relocated or would have to be built with a single, inadequate access of Campus Hills Drive. The witness testified that based on the evidence presented, granting the requested variance would cause no adverse impact on the Church, HCC or anyone else. He noted that the Church and HCC have both consented to the granting of the variance

Finally, Anthony S. McClune, Manager, Division of Land Use Management, of the Department, testified. He summarized the staff report which recommended conditional approval.

No protestants testified in opposition to the Applicant's request.

CONCLUSION:

The Harford County Code, pursuant to Section 267-11, authorizes the granting of variances provided the Board finds that (1) by reason of the uniqueness of the property or topographical conditions literal enforcement of Part 1 will result in practical difficulty or unreasonable hardship; and (2) the variance will not be substantially detrimental to adjacent properties and will not materially impair the purposes of this Part 1 or the public interest.

The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994) wherein the court stated:

"In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

Case No. 4989 - Ward & Lambdin, Inc.

An example of uniqueness is found in the use variance case of Frankel v. Mayor and City Council, 223 Md. 97, 104 (1960), where the court noted: "He met the burden; the irregularity of the...lot...that it was located on a corner of an arterial highway and another street, that it is bounded on two sides...by parking lots and public...institutions, that immediately to its south are the row houses..."

The Court of Appeals of Maryland in McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973) held that the following criteria are to be used for determining whether "practical difficulty" has been established:

1. Whether strict compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the use of the property for a permitted purpose or render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the Applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

It is generally recognized that a confluence or combination of factors may be considered in determining whether a property is unique. Kilmartin v. Board of Zoning and Adjustment, 579 A.2d 1164 (D.C. App. 1990). The courts have also held that unique characteristics of the property that justify a variance are not limited to those that inure to the land in particular, Capitol Hill Restorations Society v. District of Columbia Board of Zoning and Adjustment, 534 A.2d 939 (DC 1987), but that the use of adjoining and surrounding lands may also be considered. Valley View Civic Association v. Zoning Board of Adjustment, 462 A.2d 637 (DC 1983). Uniqueness does not require a property to be the only property with these characteristics. However, the conditions must be sufficiently rare so that, if all similarly situated properties in the district receive variances, the district would remain materially unchanged. Rathkopf, The Law of Planning and Zoning, Section 38.03 (1988).

Case No. 4989 - Ward & Lambdin, Inc.

The Hearing Examiner finds that the Applicant has met the required burden of proof to justify the requested area variance. Based on the law and the evidence presented, the Hearing Examiner finds that the subject property is unique due to its shape, topography, soil conditions and location with regard to the Church and HCC and other similar commercial uses in the area. The evidence showed that without the variance the Station could only be built on the subject property with a driveway which would be unacceptable from a traffic or planning standpoint.

The Hearing Examiner further finds that the Applicant would suffer practical difficulty if the area variance were denied. It is important to note that the use itself is principally permitted. It is only the location of the driveway in relationship to HCC and the Church which is at issue. It would be unnecessarily burdensome to deny the variance under these circumstances.

Finally, the Hearing Examiner finds that granting the variance to allow the driveways to have a 0 foot setback will cause no adverse impact to adjoining property owners and will not impact the public interest or the purpose of the Code. The two property owners whose properties are impacted by the request, HCC and the Church, (See Attachment 10 to the Staff Report) have both consented to the variance. The Staff Report recommends approval. The testimony of Mr. Cornelius and Mr. Canavan establishes conclusively that no traffic or other impacts will result from construction of the driveway entrances as shown on the site plan.

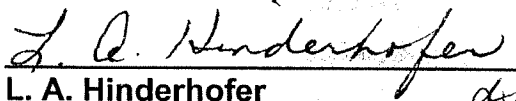
The Applicant explained that the exact driveway locations may change slightly from those shown on the site plan due to SHA requirements. The Applicant also explained that assuming additional zoning approvals are obtained, the westernmost driveway providing access to Route 22 from the site could be located on a portion of HCC's property as shown as "Option A" on Exhibit 11, thus requiring a 0 foot setback from the HCC property. The Hearing Examiner finds that the driveway locations shown on Option A and/or Option B of Exhibit 11 will cause no adverse impact and should be approved.

Case No. 4989 - Ward & Lambdin, Inc.

Therefore, the requested area variance to construct the proposed driveways within 400 feet of the property line of HCC and the Church, (0 feet proposed), as shown on Option A and/or Option B of Exhibit 11 is hereby recommended, subject to the following conditions:

1. The Applicant obtain all necessary permits and approvals for the proposed facilities.
2. The Applicant obtain approval for the proposed entrances from the State Highway Administration.
3. The Applicant submit a traffic analysis study with the site plan that conforms to the Adequate Public Facilities regulations of the Code.
4. The Applicant submit detailed site plans to the Department of Planning and Zoning for review through the Development Advisory Committee.

Date JANUARY 20, 2000



L. A. Hinderhofer ds
Zoning Hearing Examiner